

Update: Sexual Assault Benchbook

CHAPTER 2

The Criminal Sexual Conduct Act

2.5 Terms Used in the CSC Act

I. “Force or Coercion”

Insert the following case summary before the partial paragraph at the bottom of page 75:

In *People v Perkins*, ___ Mich ___, ___ (2003), the Michigan Supreme Court reversed the Court of Appeals’ ruling that reinstated the defendant’s CSC–I charge. *Perkins* involved a 16-year-old girl (complainant) and a Bay County Sheriff (defendant). The complainant and the defendant had been acquainted for four years during which time a sexual relationship developed between them. The complainant often babysat the defendant’s children, attended church with the defendant’s family, and for a time resided with the defendant’s family, and the defendant’s wife coached the complainant’s basketball team. The Michigan Supreme Court held that the prosecutor failed to present evidence of coercion sufficient to bind the defendant over for trial.

The Michigan Supreme Court stated the following regarding the prosecutor’s theory of coercion:

“As an authority figure, defendant had engaged the complainant in continuing sexual conduct beginning when she was much younger. The prosecutor reasoned that defendant thus established a pattern of abuse that eroded the complainant’s ability to resist his sexual advances during the incident in question.” ___ Mich at ___.

The Supreme Court dismissed the defendant’s CSC–I charge because “the record shows that no evidence was presented at the preliminary hearing to support the prosecutor’s assertion that the complainant was coerced, in any sense of that term, to fellate defendant on the occasion in question.” ___ Mich at _____. However, because of the lack of evidence presented, the Court found

it unnecessary “to reach the question whether psychological subjugation is a viable theory on which to rest a charge of CSC-I.” ____ Mich at ____.

2.6 Lesser-Included Offenses Under CSC Act

B. Applicable Statute and Three-Part Test

Insert the following case summary on page 110 immediately before the beginning of Subsection C:

In *People v Mendoza*, ___ Mich ___, ___ (2003), the Michigan Supreme Court ruled that both voluntary and involuntary manslaughter are necessarily lesser-included offenses of murder; therefore, manslaughter is an inferior offense of murder as contemplated by MCL 768.32. Provided a rational view of the evidence supports an instruction on the inferior offense, a defendant is entitled to such instruction. In reaching this decision, the Court was obligated to overrule *People v Van Wyck*, 402 Mich 266 (1978), and its progeny to the extent those opinions held otherwise. ___ Mich at ___.

Although *Mendoza* may not directly impact or apply to many CSC cases, the opinion is instructive in its detailed review of *Cornell*, *supra*, and its discussion of necessarily lesser-included, cognate lesser-included, and inferior offenses. The *Mendoza* Court emphasized the requirement that a rational view of the evidence must support an instruction on the lesser-included or inferior offense. When a rational view of the evidence does not support giving the instruction, it is not error for the court to deny a defendant's request for it. ___ Mich at ___.

CHAPTER 5

Bond and Discovery

5.14 Discovery in Sexual Assault Cases

B. Discovery Rights

1. Generally

Insert the following case summary at the end of the text on page 270:

A trial judge may not compel a party in a criminal case to generate a report for its expert witness when no such report exists. *People v Phillips*, ___ Mich ___, ___ (2003). MCR 6.201(A), by its plain and unambiguous language, applies only to already-existing reports.

In *Phillips*, the defendant was charged with second-degree murder after a single vehicle accident killed the passenger in the car the defendant was driving. The defendant retained three expert witnesses for trial, and the prosecutor requested discovery of the experts' reports. No reports then existed, and the prosecutor moved to strike the defendant's experts "on the basis that defendant had not turned over all reports or curricula vitae of the experts." ___ Mich at ___. The trial court ordered the defendant to comply with the prosecutor's request, and the prosecutor again moved to strike the witnesses. The trial court then ordered the defendant to "obtain reports from the defense expert and provide them within thirty (30) days, to the People." The court denied the defendant's motion for reconsideration and indicated that it had discretion to order the creation of such reports under MCL 767.94a and MCR 6.201.

On leave granted, the Court of Appeals reversed the trial court and held that no language in MCR 6.201 required an expert to create a written report to produce in response to a party's discovery request. The Court also rejected the trial court's assertion that it had good cause to modify the rule's requirements and prohibitions and was entitled to do so under MCR 6.201(I). On remand from the Michigan Supreme Court, the trial court failed to establish good cause sufficient to invoke the authority to modify the court rule. The Supreme Court affirmed the Court of Appeals and reasoned that a party cannot be obligated to disclose reports that do not exist at the time of the discovery request. The Court further stated:

"We recognize that there may be circumstances where good cause does exist to permit a trial court to compel a party to create expert witness reports. For example, good cause may exist when a trial court believes a party is intentionally suppressing reports by an expert witness." ___ Mich at ___.